



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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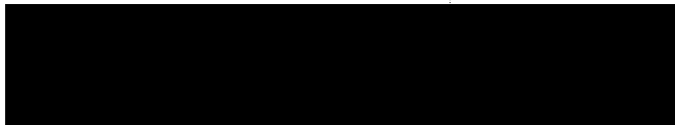
File: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:

AUG 21 2000

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is involved in the manufacture, sale and service of ice cream equipment. It seeks to employ the beneficiary permanently in the United States as an electrical engineering manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that the beneficiary qualifies for classification as a member of the professions holding an advanced degree or the equivalent, or that the job offered requires the services of a member of the professions holding an advanced degree or the equivalent, or an alien of exceptional ability.

On appeal, counsel submits a brief.

Section 203(b) of the Act states, in pertinent part, that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.--

(A) In General.--Visas shall be made available...to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States...

Pursuant to Service regulations at 8 C.F.R. 204.5(k)(2), the term "advanced degree" means:

any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The first issue to be considered in this proceeding is whether the beneficiary qualifies for the classification sought. The record indicates that the beneficiary held the foreign equivalent of a United States baccalaureate degree in engineering and more than five years of progressive experience as of September 9, 1996, the date the application for alien employment certification, Form ETA-750, was filed with the Department of Labor. He therefore qualifies as a member of the professions holding the equivalent of an advanced degree.

The other issue to be considered in this proceeding is whether the petitioner has established that the job offered requires a member of the professions holding an advanced degree or the equivalent, or an alien of exceptional ability, as required by 8 C.F.R. 204.5(k)(4)(i). The petitioner indicates on the Form ETA 750 that the minimum requirements to perform the job duties of the proffered position are a Bachelor's degree or its equivalent in electrical or mechanical engineering and five years of experience either in the job offered or in the related occupation of electrical engineer or mechanical engineer. At Block 15 of the ETA-750, the petitioner specifies that the engineering experience must include manufacturing machinery product development. The petitioner did not use the word "progressive" to describe the experience, which would have made the adjudication of this petition easier, but it is not unreasonable to consider product development by an electrical or mechanical engineer to be work which is progressive in nature.

As the proffered position requires a professional holding an advanced degree or its equivalent, the petition may be approved under section 203(b)(2) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.